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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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FILE

In the Matter of

Amendment of the Commission's  
Rules to Establish New Personal  
Communications Services

GEN Docket No. 90-314  
ET Docket No. 92-100

COMMENTS

Pursuant to Section 1.415(a) of the Federal Communications Commission's ("FCC" or "Commission") Rules and Regulations, 47 C.F.R. §1.415(a), Swayzee Telephone Company ("STC") submits its comments in response to the Commission's Notice of Proposed Rulemaking and Tentative Decision (hereinafter "NPRM") in the above-referenced proceeding.<sup>1/</sup>

1. STC is a local exchange carrier ("LEC") serving 947 subscribers in a single exchange in the vicinity of Swayzee, Indiana. STC is interested in assuring that the personal communications services ("PCS") market will be a competitive one. Toward that end, STC urges the Commission to establish eligibility requirements for PCS licensees which will ensure that incumbent communications service providers will not monopolize

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<sup>1/</sup> 7 FCC Rcd 5676 (1992).

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PCS and to reject competitive bidding for PCS because it favors existing providers over new entrants.

**PCS ELIGIBILITY STANDARDS SHOULD ENCOURAGE NEW ENTRANTS**

2. The Commission proposes that incumbent cellular licensees be permitted to provide PCS outside of their service area and seeks comment as to why they should be allowed to provide service within their service areas. (NPRM at paragraphs 63-70) The FCC also proposes that LECs be permitted to provide PCS service within their exchange areas or else be eligible for a limited amount of PCS spectrum within their exchange areas. (NPRM at paragraphs 71-80)

3. PCS is competitive with cellular and other wireless telecommunications services. Thus, there is a serious risk of anticompetitive behavior in the PCS market by these providers. The FCC acknowledges the risk that incumbent cellular operators may seek PCS licenses in their service areas in order to stymie competition:

Incumbent cellular operators might limit entry for some period of time by acquiring licenses from potential competitors....

NPRM at paragraph 64

It cites a report by the General Accounting Office which found that:

"a policy that favors the allocation to new firms, rather than to existing cellular telephone carriers in each market, would seem to serve the public interest by providing

additional competition and potentially lower prices for consumers."

NPRM at paragraph 65, citation omitted

4. STC is likewise fearful that incumbent operators might engage in anticompetitive practices. STC believes there is a similar, if somewhat lesser threat of anticompetitive behavior by incumbent cellular providers licensed for PCS outside of their service area. As established mobile services providers, cellular operators have an incentive to limit new mobile services providers in adjacent service areas on the basis that comparisons will necessarily be drawn between the neighboring providers. Also, it is a natural response for an incumbent operator to seek to protect its "turf". If incumbent cellular operators are eligible for PCS licenses, new entrants would have a more difficult time establishing themselves in the PCS market.

5. In the case of incumbent LECs, the FCC recognizes that they too pose an anticompetitive threat to new PCS entrants. (NPRM at paragraph 71) However, the FCC supports inclusion of LECs among those eligible for PCS. (NPRM at paragraph 72)) STC disagrees with the Commission's tentative conclusion that all LECs be eligible for PCS licenses. The same conflict of interest exists with respect to LECs with an ownership interest in cellular systems, i.e., the desire to limit competition in wireless services versus the responsibility to provide PCS service once a license is obtained.

**COMPETITIVE BIDDING LIMITS  
INVOLVEMENT BY NEW ENTRANTS IN THE PCS MARKET**

6. The Commission has suggested that competitive bidding, i.e., auctions, be used to award PCS licenses if and when Congress grants the FCC auction authority (NPRM at paragraph 91). STC opposes auctions for PCS licenses because they will necessarily exclude smaller, start-up companies from the PCS market. Notably, in the FCC's discussion of an auction process, it notes, "the party most willing to pay would ultimately outbid all other parties in an oral bidding." (NPRM at Appendix E) The entity "most willing to pay" would also have to be an entity financially able to outbid its competitors. Certainly, new PCS entrants would be at a disadvantage in bidding against established cellular operators or large LECs. Thus, competitive bidding for PCS licenses does not serve the public interest in a competitive PCS marketplace.

7. The lottery process utilized to license cellular providers has proven to be effective and equitable. STC therefore encourages the FCC to employ the lottery to award PCS licenses as well. A lottery preference should be given to small LECs such as STC who do not participate in the cellular industry as licensees or part owners of licensees.

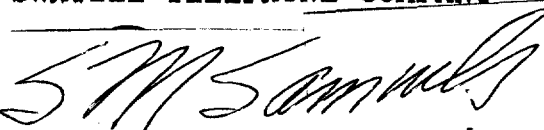
CONCLUSION

8. The public would not be served if established cellular and LEC operators were permitted to obtain PCS licenses. For this reason, STC recommends that the FCC exclude incumbent cellular providers and LECs who own an interest in cellular providers from the PCS market. Alternatively, in order to prevent the most obvious anticompetitive behavior, STC recommends that cellular providers and LECs with a cellular ownership interest not be eligible for PCS licenses for their respective service areas. Also, in the interest of a more open and more competitive PCS marketplace, STC urges the Commission to award PCS licenses via a lottery, with a preference for LECs outside of the cellular industry, rather than via auctions.

Respectfully submitted,

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By:

  
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